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WJR 6/22/07

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

ANTOINETTE FALLS, Individually and as
Administratrix of the Estate of DANIEL
FALLS,

Plaintiff,

Civil Action No. 06-C-613
Judge Bedell

v.

UNION DRILLING, INC., a Delaware
corporation, KEVIN WRIGHT, DONALD
ROACH, LINDA HALL and
W. VA. INSURANCE COMPANY,

Defendants.

**ORDER DISMISSING DEFENDANTS
DONALD ROACH, KEVIN WRIGHT, and UNION DRILLING, INC.**

The allegations against these Defendants involve common law tort liability claims brought in response to injuries allegedly caused by their work-related conduct. Defendant Donald Roach and Defendants Kevin Wright and Union Drilling, Inc., separately, by counsel, moved this Court to dismiss the claims against them, asserting immunity from the allegations set forth in the above-styled civil action on April 17, and May 7, 2007, respectfully. On May 7, 2007, Plaintiff Antoinette Falls, individually and as Administratrix of the estate of Daniel Falls, filed a response to Defendant Donald Roach's Motion to Dismiss, and on May 14, 2007, Defendant Donald Roach filed a Reply to Plaintiff's Response to Defendant's Motion to Dismiss. On May 17, 2007, Plaintiff filed a Response to Defendants Kevin Wright and Union Drilling, Inc.'s Motion to Dismiss, and May 22, 2007, Defendants Kevin Wright and Union Drilling, Inc. filed a Reply to Plaintiff's Response to Defendants' Motion to Dismiss.

After reviewing the motions, responses, replies and supporting memoranda and legal authority, the Court makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

1. Based on the allegations in the Complaint, the decedent, Daniel Falls, was fatally injured on February 4, 2005, in an automobile accident while a passenger in a vehicle driven by Defendant Donald Roach. Complaint, ¶¶ 1, 14.

2. Defendants Donald Roach and Kevin Wright, at all times relevant to this proceeding, were the employees of Defendant Union Drilling, Inc. Complaint, ¶ 6.

3. On February 4, 2005, and at all times relevant to this proceeding, Daniel Falls was an employee of Defendant Union Drilling, Inc. Complaint, ¶ 8.

4. Based on the allegations in the Complaint, Defendant Donald Roach and Daniel Falls were traveling from their place of employment with Defendant Union Drilling, Inc. Complaint, ¶ 14.

5. In her Complaint, Plaintiff alleges the injuries suffered by Daniel Falls were caused by the work-related negligence of Union Drilling, Inc. and its employees, Defendants Kevin Wright and Donald Roach. Complaint, ¶ 9, 11, 12, 13, 14, 17.

6. In her Complaint, Plaintiff alleges that Defendant Union Drilling, Inc. caused Defendant Donald Roach "to work excessive hours without adequate rest or sleep." Complaint, ¶¶ 9, 12.

7. In her Complaint, Plaintiff alleges that the work-related negligence of Defendant Union Drilling, Inc. and its employees Defendants Kevin Wright and Donald Roach was the direct and proximate cause of Daniel Falls' fatal injuries. Complaint, ¶14.

8. Plaintiff does not allege that any of the Defendants violated West Virginia's "deliberate intent" statute, W. VA. CODE § 23-4-2(d).

9. Plaintiff does not allege that Defendant Union Drilling, Inc. is in default of payments required by the Workers' Compensation Act or otherwise fails to be in compliance with the Act.

CONCLUSIONS OF LAW

Based on these findings of fact, the Court makes the following conclusions of law:

1. Pursuant to W. VA. CODE § 23-2-6 (1991), Defendants Union Drilling, Inc., and its employees Kevin Wright and Donald Roach, are entitled to sweeping immunity from common law tort claims for negligently inflicted injuries brought by Union Drilling, Inc. employees. *Bias v. Eastern Associated Coal Corp.*, 640 S.E.2d 540, 544 (W. Va. 2006).

2. An employer who is otherwise entitled to the immunity provided by W. VA. CODE § 23-2-6 (1991) may lose that immunity in only one of three ways: (1) by defaulting in payments required by the Workers' Compensation Act or otherwise failing to be in compliance with the Act; (2) by acting with "deliberate intention" to cause an employee's injury as set forth in W. VA. CODE § 23-4-2(d); or (3) in such other circumstances where the Legislature has by statute expressly provided an employee a private remedy outside the workers' compensation

system. Syllabus Point Two, *Bias v. Eastern Associated Coal Corp.*, 640 S.E.2d 540 (W. Va. 2006).

3. Compensability of a claimed injury and the immunization of an employer from common law tort claims are independent legal issues. *Bias v. Eastern Associated Coal Corp.*, 640 S.E.2d 540, 546 (W. Va. 2006).

4. No statute expressly provides this Plaintiff with a private remedy outside the workers' compensation system. *Bias v. Eastern Associated Coal Corp.*, 640 S.E.2d 540, 544 (W. Va. 2006).

5. An employee of a subscriber in good faith to the workers' compensation system is entitled to immunity from suit for common law tort claims of work-related negligence brought by a fellow employee. W. VA. CODE § 23-2-6a (2007).

6. When considering a motion claiming Plaintiff has failed to state a claim upon which relief may be granted, pursuant to West Virginia Rule of Civil Procedure 12(b)(6), a Circuit Court appraises the sufficiency of a Complaint by inquiring whether "it appears beyond a doubt that that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Syllabus Point 2, *Holbrook v. Holbrook*, 474 S.E.2d 900 (W. Va. 1996).

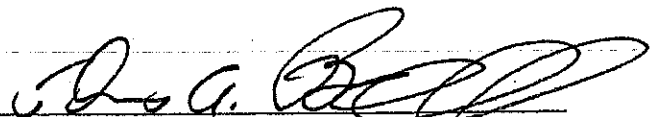
7. Because Defendants Union Drilling, Inc., Kevin Wright and Donald Roach are entitled to immunity for all claims brought in the above-styled matter, Plaintiff Antoinette Falls, individually and as Administratrix of the estate of Daniel Falls, has failed to state a cause of action upon which relief may be granted. Accordingly, Defendants Union Drilling, Inc., Kevin Wright, and Donald Roach must be dismissed from this civil action as a matter of law.

WHEREFORE, the Court ORDERS that all claims in the above-styled civil action against Defendants Union Drilling, Inc., Kevin Wright, and Donald Roach, be hereby DISMISSED with prejudice.

The Court hereby notes the objections and exceptions of Plaintiff to any and all adverse rulings.

The Clerk is directed to submit a certified copy of this Order to counsel of record.

ENTER this 21 day of June, 2007.


The Honorable Thomas A. Bedell, Judge